

# **Committee on Resources**

## **Full Committee**

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### **Witness Testimony**

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**Statement of Kevin Gover**

**Assistant Secretary - Indian Affairs**

**Department of the Interior**

**before the**

**Committee on Resources**

**United States House of Representatives**

**August 3, 1999**

Mr. Chairman and members of the Committee, I am pleased to appear before you today to continue our discussion of the issues surrounding the payment of contract support to Indian tribes and tribal organizations.

### **Update**

Since the Committee's hearing of last February, the General Accounting Office has submitted its report on contract support;<sup>(1)</sup> the Bureau of Indian Affairs (BIA)/Tribal Work Group on Contract Support Costs completed its review;<sup>(2)</sup> and the National Congress of American Indians published its recommendations.<sup>(3)</sup> GAO offers four alternatives for Congressional consideration, but does not recommend one approach over the others. The Work Group and NCAI recommend increased appropriations to fully fund contract support requirements and both advocate additional studies or "bench marking" of tribal needs for contract support.

In the meantime, the Federal Government is a defendant in a half-a-dozen law suits over contract support, and as part of the FY 2000 budget, the Senate Appropriations Committee would continue the moratorium on additional Self-Determination contracting. Based on broad interpretation of the Indian Self-Determination Act, a court found the United States liable for breach of contract, and required the Department to pay indirect costs for Interior and other Federal agencies contracting under the Act.

Mr. Chairman, while I recognize the reluctance of the Committee to amend the Indian Self-Determination Act, I have come to the conclusion that the authorizing committees, appropriations committees and the Administration must jointly seek a resolution of the contract support dilemma.

### **Objectives in Resolving Contract Support Funding**

My objective is to reach agreement in the following areas:

- We need to develop a reliable mechanism to ensure funding for indirect costs associated with grants made by other Federal agencies;
- The current and future costs of contract support should be accurately estimated;
- The BIA should fully fund contract support for our self-determination awards within existing

resources; and

- We should put to rest the questions Tribes are raising about the commitment of both Congress and the Administration to self-determination contracting.

## BIA's Option

Mr. Chairman, with these goals in mind, and considering court decisions as well as the recommendations contained in the other reports and studies on contract support, we are developing an option that could be implemented to resolve the contract support problems that have bedeviled us for two decades.

I will briefly summarize the key elements of the option proposed:

- A mechanism must be devised to ensure fair compensation for the indirect costs incurred by Indian Tribes in administering grants awarded by Federal agencies.
- Within the BIA, separately identify "grant assistance" from Self-Determination awards. The goal of the Self-Determination Act was to turn **federally operated** programs over to Tribes. There are a number of programs that the BIA funds that were never operated by BIA employees and would not be operated by BIA employees if a Tribe declined an award. In our implementation of Self-Determination, however, we have acted as if every award were a Self-Determination contract, and thus eligible for contract support payments.
- For those programs identified as grants, grandfather into the programs the amount of contract support currently obligated for those programs.
- For the remaining activities that are actual or potential Self-Determination contracts or Self-Governance compacts, estimate the total cost of contract support if all tribes contracted for all programs and use this information to structure budget requests.
- Evaluate tribal requests for payment of certain direct costs.

## Conclusion

Mr. Chairman, working together, I believe that we can fashion a contract support proposal that keeps faith with Tribes so that they are not penalized for assuming program operations that would otherwise be run by BIA employees, while recognizing that not all funds that flow through the BIA should be accorded the special status of Self-Determination awards.

I would be pleased to answer any questions you may have.

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1. "Indian Self-Determination Act: Shortfalls in Indian Contract Support Costs Need to be Addressed," ([GAO/RCED-99-150](#)), June 1999.

2. "A Study of Contract Support Costs in the Bureau of Indian Affairs and Recommendations for Reform," June 1999.

3. "Final Report of the National Policy Work Group on Contract Support Costs," July 1999.

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